

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

DANIEL LEE BEST,

Plaintiff,

v.

CIVIL ACTION NO. 2:09-cv-00646

DR. SUBHASH GAJENDRAGADKAR,

Defendant.

MEMORANDUM OPINION AND ORDER

This case concerns a state prisoner's allegations that the medical treatment he has received in prison violates his constitutional rights. The case was referred to Magistrate Judge Mary E. Stanley pursuant to 28 U.S.C. § 636 for proposed findings and a recommendation for disposition. Pending before the court are the plaintiff's Motion for Leave to Supplement Complaint and Join Emil Anton Dameff as Defendant Party to Action [Docket 52], the plaintiff's Motion for Temporary Restraining Order [Docket 53], and the plaintiff's Motion for Default Judgment [Docket 55]. The Magistrate Judge has submitted findings of fact and recommended that the court deny the plaintiff's Motions [Docket 72, 75].

Specifically, the Magistrate Judge found that the plaintiff's proposed claim against Dr. Dameff "does not arise out of the same transaction or occurrence or series of transactions or occurrences as those alleged against Dr. Gajendragadkar," and, accordingly, found that it was not appropriate for the plaintiff to supplement his Complaint to join Dr. Dameff as a defendant. (Proposed Findings & Recommendation, Docket 75, at 7.) The Magistrate Judge further found that,

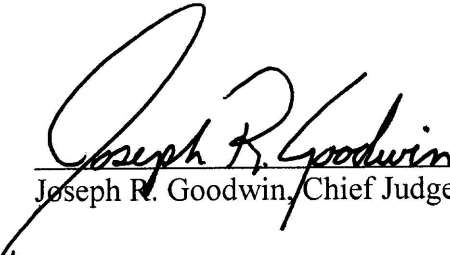
in light of her finding that Dr. Dameff could not be properly joined as a defendant, the plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction against Dr. Dameff is now moot. (*Id.*, at 10.) Regarding the plaintiff's Motion for Default Judgment, the Magistrate Judge found that the plaintiff was not entitled to default judgment because the defendant had good cause for the delay in filing his answer. (Proposed Findings & Recommendation, Docket 72, at 2.)

Neither party has filed objections to the Magistrate Judge's findings and recommendation. Accordingly, the court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge. The court **DENIES** the plaintiff's Motion for Leave to Supplement Complaint and Join Emil Anton Dameff as Defendant Party to Action [Docket 52]. The court **DENIES** as moot the plaintiff's Motion for Temporary Restraining Order [Docket 53]. The court **DENIES** the plaintiff's Motion for Default Judgment [Docket 55].

This case shall remain referred to Magistrate Judge Stanley for additional proceedings and submission of proposed findings and recommendation for disposition concerning the remaining claims.

The court **DIRECTS** the Clerk to send a certified copy of this Memorandum Opinion and Order to Magistrate Judge Stanley, counsel of record, and any unrepresented party.

ENTER: January 13, 2011


Joseph R. Goodwin, Chief Judge